Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 89-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

KAREN DE KLEINMAN,

Petitioner,

VS.

THE RESIDENTIAL BOARD OF MANAGERS OF THE OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

KAREN DE KLEINMAN
Petitioner, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

REPLY BRIEF

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STATEMENT OF FACTS

The Petitioner respectfully submits the within brief in reply to several misstatements of fact and law contained in Respondent's arguments.

At the outset, and contrary to Respondent's inaccurate contention, this case did not arise out of state law of New York, but rather pursuant to violations of the 1st, 5th and 14th Amendments of the Federal Constitution and under fundamental common-law protection involving traditional rights of private property.

It should be noted that these violations were described not only in Petitioner's lower courts' proceedings but also, initially, in her Amended Answer and Counterclaims (annexed hereto and made a part hereof in App. A.1), in paragraphs 15-21 and 23-26 of her

counterclaim allegations, and form the basis of Petitioner's contentions herein.

Specifically, these violations were further delineated by Petitioner in her Motion for Reargument's moving affidavit in the lower court (annexed hereto and made a part hereof in App. A.11).

Significantly, and not to be overlooked, is the fact that while the subject litigation was first initiated by Respondent, the Petitioner, in seeking to enforce her Constitutional rights, under the 1st, 5th and 14th Amendments, commenced and was successful in two other related actions in the Supreme Court (N.Y. County), bearing Index #10516/86[1] and #7081/86[2]. Copies of Judge Wilk's determinations are annexed hereto and

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[1],[2]Noticed in the NY Law Journal simultaneously with Index #8147/86 (the within controversy), on Nov. 19, 1987, on p. 13, col. 1.

made a part hereof in App. A.28,35.

Clearly, Respondent's factual constitutional violations were invoked by the Petitioner with the initiation of the subject litigation and were likewise directly involved in the above undisputedly related litigations, **between the same parties, the same attorneys and simultaneously heard before the same Judge**. Not only were Petitioner's constitutional issues properly raised and ruled upon by the State Courts, but pointedly, even the Court of Appeals on reargument ruled upon Petitioner's constitutional contentions.

Significantly the facts, circumstances and import of Petitioner's original existing pleadings, as well as the contents of her subsequent motions, affidavits, etc., all dealing with the same interference and frustration, caused by the Respondent in connection with her

property rights, and obviously the litigation of the two related cases, supra, as well as the constitutional basis for same, have conveniently escaped Respondent and its two law firms.

In this connection, it should be noted that the prevailing law relating to Petitioner's constitutional right to obtain vindication and restoration of her property rights is summed up in Corpus Juris Secundum, Volume 16A, Sections 506 and 507, (annexed hereto and made a part hereof in App. C.1-8):

> "The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, the protection of which is one of the most important purposes of government. It is a common-law right, which existed before the adoption of the federal and state constitutions, and is not now

dependent on them for its existence. However, to insure their continuance, property interests are guaranteed by the federal and by the various state constitutions."

(emphasis & underscore supplied)

In Lynch v. Household Finance Corporation, et al., 405 U.S. 538, this Court, in referring to the right to enjoy property as a personal right, stated the principle as follows:

"[7,8] Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel is in truth a "personal" right, whether the "property" in question be a welfare check, a home,

> or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized."
>
> (emphasis & underscore supplied)

Respondent's argument that Petitioner never previously invoked her contention that she was completely unaware of the "9-month" limitation in perfecting her appeal, is patently inaccurate, inasmuch as her lack of knowledge was due to her attorneys' gross failure in advising her that such limitation was contained in the rules of the Appellate Division; nor did they advise Petitioner of the extension and enlargement application availability. Petitioner specifically refers to these

failures in both her Reply Affidavit[3] and Reargument papers[4] submitted in support of her motion for leave to appeal in the Court of Appeals.

Another inaccuracy is Respondent's argument on page 3 of its brief, that the Petitioner has erroneously mislabeled her request for relief in her notice of motion in the lower court. Clearly the Petitioner has invoked a savings clause in her notice by requesting:

> "and for such other and different relief as may be deemed just and proper in the premises."

New York procedural practice and case law has traditionally included "different relief as may be just in the premises."

Equally unsubstantiated is Respondent's reference to §500.11(c) of

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[3]See, Petition/App. B.1-78.

[4]See, App. A.11-27 herein

the rules of the lower court relating to reply briefs on motions. Certainly Respondent's law firms are knowledgeable of the practice herein, and likewise know that reply briefs are accepted by the Court, if blatantly inaccurate arguments are interposed. The very fact that the lower court accepted Petitioner's reply papers - and same are part of the record - reflects on the hollowness of Respondent's contentions.

REPLYING TO RESPONDENT'S POINT 1

In refusing to discuss the other points interposed by the Petitioner, Respondent indicates that it is relying in substance solely on the contention that the Constitutional violations were neither properly presented nor ruled upon by the state courts.

It has been previously demonstrated herein that the Respondent has completely ignored the pleadings and the nature of

the within subject litigation. **Petitioner's counterclaims, asserted from the inception of this litigation in her Amended Answer, are based on Federal violations.** Equally important, are the Constitutional arguments advanced by the Petitioner, but ignored by the Respondent, not only in her papers submitted in the Supreme Court (N.Y. County), but also in her appellate papers.

There, it was clearly delineated and extensively discussed that the basis of this litigation with the Respondent was its brazen violation of her personal, human, property and civil rights - let alone, the substance of her litigation (Index #'s 10516/86 and 7081/86, supra). This consortium of Constitutional violations by the Respondent, in those papers, as well as in her discussions in the Court of Appeals clearly reflects her

claims, that she properly and timely presented the Respondent's violation of her Constitutional rights and that those courts ruled on her contentions.

In New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, this Court in delineating the basis upon which a writ of certiorari is granted stated the rule:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. **No particular form or words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the**

claim is to be regarded as having been adequately presented."

(emphasis & undersore supplied)

See also, Eddings v. Oklahoma, 455 U.S. 104. Taylor v. Kentucky, 436 U.S. 478.

This court further said in Lovell v. City of Griffin, 303 U.S. 444, per Justice Holmes:

"When as here there is a plain assertion of federal rights in the lower courts, legal rules as to how far it shall be reviewed on appeal do no necessarily prevail. *** Whether the right was denied or not given due recognition by the [state court] *** is a question as to which the plaintiffs are entitled to invoke our Judgment."

(emphasis & underscore supplied)

Merely because a court does not specifically mention the basis of its rulings on Constitutional issues, does

not necessarily mean that it failed to rule upon them. Significantly, in Petitioner's application for reargument in the lower court, her main thrust therein was Respondent's violations of her specific Constitutional rights (See, App. A.19-27). Thus, the lower court in denying her application, obviously ruled upon her request. Therefore, Respondent's argument herein is not only inaccurate and misleading, but is patently absurd.

In Street v. New York, 394 U.S. 576, 583, this Court, in granting a writ in a case where the lower state court has failed in its decision to mention the questions before it, laid down the principle as follows:

> "The failure by the lower court to articulate its reasons for its denial of Petitioner's application for leave to appeal is a sound basis

for the granting of a writ of certiorari." (Underscoring supplied)

Again in Columbia Water Power Company v. Columbia Electric Street Railway Light and Power Company, 172 U.S. 475, 488, this Court in issuing a writ of error stated the rule:

"But where the validity of a treaty or statute of the United States is raised, and the decision is against it, or the validity of a state statute is drawn in question, and the decision is in favor of its validity, this court has repeatedly held that, if the Federal question appears in the record and was decided, or such decision was necessarily involved in the case, and the case could not have been determined without deciding such question, the fact that it was not

specially set up and claimed is not conclusive against a review of such question here. (Emphasis & underscore supplied)

REPLYING TO RESPONDENT'S POINT 2

The Respondent erroneously refers to the dismissal of Petitioner's appeal for untimeliness and presenting no federal questions for the Court. It would appear that Respondent has failed to read Petitioner's brief. At bar, the Petitioner, for all of the appellate litigation herein has proceeded "pro se". Obviously, lack of proper counsel and representation was a denial of her constitutional rights. Additionally, Petitioner did not receive "due process" when she had no attorney representing her: it is to say, as if her previous attorney had died. These violations of her Constitutional rights do not seem to impress Respondent's attorneys.

The "due process" clause of the Constitution guarantees a litigant the assistance of counsel regardless of the circumstances.

In Gibbs v. Burke , 337 U.S. 773, it appeared that the defendant had failed to request counsel and he had appeared as his own attorney. In granting a writ of certiorari, this Court said:

> "Since it is clear that a failure to request counsel does not constitute a waiver when the defendant does not know of his right to counsel, we proceed to the merits." The Court further said:
>
> "*** Petitioner was handicapped by lack of counsel to such an extent that his Constitutional rights to a fair trial was denied." (per Judge Brennan) (emphasis and underscoring supplied)

Obviously, in proceeding without

counsel in all of the appellate litigation, petitioner is incapable of professionally protecting her position and her Constitutional rights. See, Tomkins v. State of Missouri, 323 U.S. 485; Price v. Johnston, 334 U.S. 266; Holiday v. Johnston, 313 U.S. 342.

Significantly, no comment has been heard from Respondent's battery of at least 7 lawyers and two law firms, regarding Petitioner's inability to retain counsel because of lack of funds and her present predicament requiring her to act "pro se". This confrontation reminds one of the famous struggle between David and Goliath!

Addressing Respondent's allegation that Petitioner's arguments do not convert a state procedural issue into a federal question, this Court in Henry v. State of Mississippi, 379 U.S. 443, stated the rule:

"****** Accordingly, we have consistently held that the question of when and how defaults in compliance with states' procedural rules can preclude our consideration of a federal question is itself a Federal question." (emphasis and underscoring supplied)

REPLYING TO RESPONDENT'S POINT 3

Quite to the contrary of Respondent's contention, the within subject deals with a problem that has tremendous "national public importance," affecting every condominium unit owner - one out of every 16 Americans- according to statistics in CAI's[5] "FACTBOOK" (excerpts of which are annexed hereto and made a part hereof in Petitioner's "Brandeis Brief", App. B.24.

So controversial has this type of

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[5]Community Associations Institute

litigation become, that remedial legislation has been proposed by the New York State Legislature, in the form of "A Cooperative and Condominium Unit Owner's BILL OF RIGHTS[6], (text and related Our Town[7] news articles are annexed hereto and made a part hereof in App. B.1-23.

In Moore's Federal Practice, Vol. 13, 817.41, it is aptly stated:

> "The importance of an issue is not necessarily measured by its impact on the litigants, but its contribution to the developments of national law." (Emphasis supplied)

Despite all of the facts and statistics, Respondent's attorneys have the "chutzpa" to claim that the Petition raises no issues of substance or public importance to warrant review.

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[6]Senate Bill #4743/Assembly Bill #3518

[7]N.Y.C. Community Newspaper

CONCLUSION

A ruling on this case, offers this Court an opportunity to benefit the general public in its attempt to solve many problems raised by condominium ownership.

Clearly, a decision on the issues involved herein will determine not only this controversy between the parties, but will also set a precedent and clear message to all Board members serving in similar capacities that:

a) all unit owners' First, Fifth and Fourteenth Amendment and property rights, must be respected and are protected under the Constitution;

b) all Boards' actions must be taken in "good faith" and without arbitrary and capricious discrimination[8]; and

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[8]Condominium & Cooperatives App.B.39

c) all Boards' actions must be within a standard of reasonableness.

Last, but not least, the issuance of a writ of certiorari would serve "**JUSTICE**" by reaffirming the fundamental principles of "**fair play**" and "**freedom**" which permeate our constitution and judicial ideology.

Petitioner respectfully asks this Court for compassion and understanding in reviewing the lower court's abuse of discretion and violation of her Constitutional rights and fervently prays that a writ of certiorari be granted.

Respectfully submitted,

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(212) 308-2058

Dated: February 5, 1990

APPENDIX A PAGES

I. AMENDED ANSWER AND COUNTER-CLAIMS/The Residential Board of Managers v. Karen de Kleinman/ Index #8147 — 1,9,A.1-10

II. N.Y. COURT OF APPEALS MOTION AND SUPPORTING AFFIDAVIT FOR REARGUMENT — 2,7,12,A.11-27

III. JUDGE WILK'S (Supreme Court, N.Y. County) DECISIONS, ORDERS AND JUDGMENTS

A. de Kleinman v. The Residential Board of Managers/Index #10516/86 — 2,9,A.28-34

B. de Kleinman v. The Residential Board of Managers/Index #7081/86 — 2,9,A.35-44

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK

THE RESIDENTIAL BOARD MANAGERS OF OLYMPIC TOWER CONDOMINIUM, Plaintiffs, - against - AI INTERNATIONAL CORP. and KAREN de KLEINMAN, Defendants.	Index No. 8147/86
KAREN de KLEINMAN, Counter-Claim Plaintiff, - against - THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT, Counter-Claim Defendants.	AMENDED ANSWER AND COUNTERCLAIM

Defendant, Karen de Kleinman, by her attorneys, Phillips Nizer, Benjamin, Krim & Ballon, for her amended answer to the Complaint, alleges:

1. Admits the allegations in Paragraph 1 of the Complaint;

2. Admits, upon information and belief, the allegations contained in Paragraph 2.

3. Denies information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.

4. Admits the allegations contained in Paragraphs 4 and 5;

5. Denies each and every allegation contained in Paragraphs 6, 7, 8 and 9, except admits that there are by-laws in the condominium and respectfully refers the Court to those by-laws for a true and correct statement as to the contents thereof;

6. Admits the allegations contained in Paragraph 10;

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11;

8. Denies each and every allegation contained in Paragraph 13, 14, 15 and 16, except admits that she refused to provide certain information arbitrarily requested by the Board;

9. Admits the allegations contained in Paragraph 17;

10. Denies each and every allegation contained in Paragraphs 18, 20 and 21;

11. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

AS AND FOR A FIRST

AFFIRMATIVE DEFENSE

12. Plaintiff has waived the right of first refusal.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

13. Plaintiff, under its own by-laws, is obligated to provide defendants with a waiver of the right of first refusal. Its refusal to do so was not only a violation of the by-laws, but was arbitrary and capricious and done for the sole purpose of harassing the defendant, Karen de Kleinman.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

14. The right of first refusal violates the New York rule against perpetuities.

AS AND FOR A FIRST
COUNTERCLAIM

15. The individual counterclaim defendants are members of the Board of Managers of Olympic Tower Condominium.

16. The counterclaim defendants were aware that the defendants had entered into an agreement for the purchase and sale of Unit 26-A, with title to close on or about August 7, 1985.

17. The counterclaim defendants were also aware that, based on the by-laws, the contract and general real estate practice in New York City, a written waiver of the right of first refusal signed by it was necessary in order for defendant, AI International Corp. to convey marketable title to defendant Karen de Kleinman, because in

the absence of such written waiver (a) defendant AI International Corp. could not take the risk of closing; and (b), no title company would insure title.

18. The counterclaim defendants intentionally and with the purpose of preventing defendant Karen de Kleinman from purchasing the unit in question, arbitrarily and capriciously refused to provide a written waiver of the right of first refusal despite the fact that it had no intention of exercising that right and despite the fact that it had no basis for questioning the ability of Karen de Kleinman to carry the unit financially.

19. As a result of the counterclaim defendants' refusal to provide the written waiver of the right of first refusal, defendant Karen de Kleinman was unable to proceed to closing on the date specified in the contract or

for a reasonable time thereafter.

20. By reason of the foregoing, defendant Karen de Kleinman was compelled to make additional payments to defendant AI International Corp., to the title company and to others, in order to finally close in November, 1985.

21. By reason of the foregoing, defendant Karen de Kleinman has been unable to lease Unit 26-A and has suffered the loss of the fair market rental of that unit.

22. Defendant Karen de Kleinman has been damaged in an amount not as yet ascertained, but at least in the sum of $250,000.

AS AND FOR A SECOND
COUNTERCLAIM

23. Defendant Karen de Kleinman repeats and realleges each and

every allegation set forth in Paragraphs 15 through 19, with the same force and effect as if fully set forth herein.

24. The foregoing conduct by counterclaim defendants is part of a continuous and long-term pattern of intentional harassment and intentional infliction of emotional distress by the counterclaim defendants upon defendant.

25. This conduct has resulted in the inability of defendant Karen de Kleinman to engage in her profession and realize income to the extent she had previously, with the result that she has suffered actual monetary damages, as well as severe emotional anxiety and distress.

26. By reason of the foregoing, defendant Karen de Kleinman has suffered damages in an amount not as yet ascertained, but at least in the sum of $5,000,000.

WHEREFORE, defendant Karen de

Kleinman demands judgment as follows:

(a) the dismissal of the Complaint;

(b) an award of $250,000 for the First Counterclaim;

(c) an award of $5,000,000 for the Second Counterclaim; and

(d) the costs and disbursements of this action.

Dated: New York, New York
February 25, 1986

Yours, etc.

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
40 West 57th Street
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Attorneys for Defendant
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TO:

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Attorneys for Defendant
AI International Corp.

COURT OF APPEALS OF
THE STATE OF NEW YORK

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,	
Plaintiffs-Respondent,	Index No. 8147/86
- against -	NOTICE OF MOTION
AI INTERNATIONAL CORP.	
Defendant,	
and	
KAREN de KLEINMAN,	
Defendant-Appellant.	
KAREN de KLEINMAN,	
Counterclaim Defendant-Appellant,	
- against -	
THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,	
Counter-Claim Defendants-Respondents:	

PLEASE TAKE NOTICE that upon

the annexed affidavit of Karen de Kleinman, sworn to this 4th day of August, 1989, the undersigned will move this Court, at a Stated Term for Motions to be held at the Court House at the Court of Appeals Hall, Albany, New York, on the 21st day of August, 1989, at 10:00 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an order permitting the reargument of her previous motion for leave to appeal to the within Court, from the Order made by the lower court denying Appellant's application to enlarge her time to perfect the subject appeal from the Order made by Mr. Justice Wilk, dated November 12, 1987, in the Supreme Court, New York County, granting Plaintiff's application for summary judgment, and upon such reargument, granting Appellant's application to enlarge her time to perfect the subject appeal, on the ground

that the Court overlooked certain controlling principles of law and undisputed facts in arriving at its decision, and for such other and further relief as may be deemed proper in the premises.

Dated: August 4, 1989
New York, New York

Yours, etc.

KAREN de KLEINMAN
Defendant-Appellant,
pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

TO: KURZMAN, KARELSEN & FRANK
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COURT OF APPEALS OF
THE STATE OF NEW YORK

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, Plaintiffs-Respondent, - against - AI INTERNATIONAL CORP. Defendant, and KAREN de KLEINMAN, Defendant-Appellant.	Index No. 8147/86 MOVING AFFIDAVIT

KAREN de KLEINMAN,

Counterclaim Plaintiff-Appellant,

- against -

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Counter-Claim Defendants-Respondent.

STATE OF NEW)
) ss:
COUNTY OF NEW YORK)

KAREN de KLEINMAN being duly sworn, deposes and says:

I am the Appellant, a licensed real estate broker in the State of New York, appearing pro se, and respectfully submit the within affidavit in support of my application to reargue the denial of my request for this Court to permit an extension and enlargement of my time to

file and perfect my Appeal from the Order and Judgment, dated November 12, 1987, rendered by Mr. Justice Wilk in the Supreme Court, New York County, previously appealed to the Appellate Division of the Supreme Court, 1st Department.

In arriving at its decision denying my application, this Court overlooked several vital and cogent propositions of law, as well as undenied facts, which should form the basis for a review of the aforesaid Order made by Judge Wilk in the Supreme Court, granting summary judgment in favor of respondents. I respectfully submit that my reply affidavit, previously interposed in the within Court in support of my request for leave to appeal herein, to a great extent, reflects many principles of law and undisputed factual material, overlooked by this Court. I annex hereto

and make a part hereof, a copy of my reply affidavit.

While I do not desire to burden this Court with a repetition of those arguments previously discussed in my moving papers, I do desire to call the Court's attention to several relevant and meritorious points of law, as well as decisive factual material which entitled me to, at least, one review of the unfair and erroneous decision made by Judge Wilk.

Essentially, this case involves controversies which are most prevalent today, in connection with the rather recently developed concept of condominium ownership. Newspapers, magazines, professional journals, etc., reflect in their columns, a growing and controversial struggle, friction and abuse, between governing boards in their fiduciary capacities and the condominium

unit owners they serve. These problems affect the lives of almost all communities throughout New York State. Unresolved issues concerning the rights and obligations of unit owners and their respective boards of managers, create daily tension, arguments, confusion, frustration, ill feeling and eventually permanent divisions amongst neighbors, friends and fellow unit owners. Due to the lack of any definitive legislative code or basic body of laws governing condominium issues, there is a prevalence of chaos, misunderstanding, disrespect and abuses of normal mores and of the law in our community.

The subject case is no exception. As indicated in my previous papers, I have struggled through great difficulty and hardships, emotional stress and strain, in addition to an enormous loss and expenditure of money, simply in my

efforts to obtain fair play and justice. The within controversy can be summed up in one sentence. A seller (AI International Corp.) requested the Board of Managers to issue a routine document, i.e., "the Waiver of its right of 1st refusal to purchase the subject unit" and in this instance, wherein I was the prospective purchaser, the request was capriciously and maliciously denied. Significantly, I owned at that time, three other units in the same condominium building, all of which were in good standing. Nevertheless, in retaliation of my bona fide efforts to organize fellow condominium unit owners in the building in an effort to enforce and protect our rights, to exercise the right to free assembly and to express grievances in an attempt to improve the living and administrative conditions in the building, to enforce our rights to

petition the board, to call special meetings, to alert public officials to dangerous and reckless violations of law which endangered the lives and property of all building residents, etc., the Board of Managers repeatedly, over a 5 month period, refused to issue this routine "waiver", never before, in the history of the building's existence, denied. The motives for the Board's punitive and discriminatory actions were purely retaliatory against me, based solely on my exercise of my Constitutional rights.

Clearly the unlawful procedure of the Board, deprived me of many basic and fundamental Constitutional rights, i.e., the rights of free speech and assembly, the right to petition, to redress grievances under the First Amendment of the U.S. Constitution, which is made applicable to the states, through the

Fourteenth Amendment.

While many courts in our states have recognized and enforced these basic rights, obviously in this case, the lower courts have failed to protect my Constitutional rights. SEE Mobil Oil Corp. vs. Rubenfeld 357 N.Y.S. 2d 589; Markese vs. Cooper 333 N.Y.S. 2d 63. It is therefore respectfully submitted that these Constitutional rights involve fundamental principles of law, and are also of great public interest, affecting a substantial number of the citizens in our state.

Judge Wilk's decision failed to consider these abuses and deprivation of my Constitutional rights; indeed, he makes no mention of them whatsoever, in his decision. As a matter of law, his decision constituted an alleged judicial enforcement of **private discrimination** which is strictly prohibited under the

Fourteenth Amendment of the U.S. Constitution.

This Court's procedural order rendered against me is actually a final determination of my Constitutional rights. I have been denied the right to appeal solely because my previously incompetent attorneys failed to advise me of the "nine month" limitation rule in the lower court, nor did they ever advise me of the provision for the extension and enlargement of time in which to perfect my appeal, despite the fact that they were adequately compensated for their services. I have therefore been denied counsel and adequate representation, similar to a situation as if my attorney had died, and therefore I was abandoned and completely in the dark, as to my time limitations to perfect the subject appeal. My former attorneys are guilty of malpractice and at an appropriate time

and forum, I intend to commence an action against them for professional inadequacies. Again I must mention that I have incurred in excess of $150,000 for legal fees in resisting the condominium Board's capriciousness and unreasonableness, and have paid, and/or accrued in excess of $500,000 (five hundred thousand) in mortgage interest payments, real estate taxes and monthly condominium charges, in connection with the subject unit, which I was compelled to purchase in November, 1985, despite the Board's adamant retaliatory and unreasonable refusal to issue its routine "waiver". Furthermore, I have never been permitted by the Board, to reside in the subject premises. I am respectfully asking for equitable intervention by this Court, to prevent a grave injustice to me and many other unit owners, statewide, in similar situations.

The concept of finality, as the basis for denying my request, relating to the right to appeal, has no application where basic Constitutional rights are being flagrantly violated and abused, as here. In light of my lack of proper representation by competent counsel and the violation of my Constitutional rights, as described herein above, the lower court abused its discretion in refusing to permit me to perfect my appeal.

I respectfully briefly refer this Court to several violations of my Constitutional rights which have been discussed in depth in my previous papers. These include the Board's:

1) refusal to provide me with a mailing list of fellow unit owners in order to freely communicate and discuss the vexing problems affecting the

welfare of all unit owners;

2) refusal to call a Special Meeting of unit owners to remove the entire board, as called for in the duly signed and delivered petition;

3) refusal to permit the inspection of the books and records of the condominium;

4) refusal to discuss and/or address the contractual agreements and arrangements in connection with our Health Club facility, internal operations, managing agent, repairs, etc.;

5) neglect to timely supply the annual Financial Statement of the condominium;

6) refusal and/or neglect to disclose information in connection with litigation;

7) failure to distribute funds

belonging to unit owners, as a result of litigation against the Sponsor of the condominium;

8) refusal to properly conduct Annual Meetings in compliance with the By-laws and state statutes;

9) refusal to hold elections of the Board, as provided by the By-laws;

10) failure to comply with the fire laws of the City of New York.

The growing problems of the confrontations between Board members against unit owners requires the understanding and immediate attention of the Court. In the interest of justice, I pray that my Constitutional rights be restored and that I be permitted to continue on with the appellate process, which until now, has been denied me in all courts, based on erroneous

interpretation of basic Constitutional rights.

WHEREFORE, I respectfully ask that upon reargument, that leave to appeal be granted and that I be enabled to perfect my Appeal.

KAREN de KLEINMAN
Defendant-Appellant, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

Sworn to, before me,
this 4th day of August 1989.

Public Notary

SUPREME COURT: NEW YORK COUNTY
INDIVIDUAL ASSIGNMENT PART 6
----------x

KAREN de KLEINMAN,

Plaintiff,

Index No.

10516/86

- against -

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Defendants.

----------x

ELLIOTT WILK, J.[1]:

Plaintiff moves pursuant to CPLR 3212 for summary judgment.

This is one of three actions currently pending between the Board of Managers of Olympic Tower and Karen de Kleinman. In this action, plaintiff seeks a declaratory judgment setting aside the election of Board members at

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[1]I acknowledge the assistance of Tina Minauskas in the drafting of this opinion.

the 1985 annual meeting, and an order permitting plaintiff to examine the books and records of the Condominium and directing defendants to provide her with a copy of the mailing list of all unit owners.

Plaintiff's challenge to the 1985 election is untimely. Plaintiff did not commence this action until May 8, 1986, more than 15 months after she had notice of a resolution prohibiting her participation in the 1985 election and approximately a year after the challenged election took place.

Because setting aside the 1985 election would substantially prejudice defendants by calling into question the Board's decisions up to the present, and because plaintiff was allowed to participate in the 1986 and 1987 elections, I find that the relief sought is barred by laches and equitable

estoppel.

That branch of plaintiff's motion for summary judgment seeking a mailing list of unit owners is granted. Defendants' contention that the list is confidential is undercut by their attorney's letter of June 3, 1986, which states that "the ownership of each unit is a matter of public record".

Plaintiff argues persuasively that the standard which governs a shareholder's right to discovery and inspection of corporate books and records should also govern a condominium unit owner's right to inspect the condominium's books and records. The papers indicate that plaintiff is acting in "good faith" and that "inspection is sought for a valid purpose". RDR Associates, Inc. v. Media Corporation of America, 63 AD2d 888, 889 (1st Dept. 1978). Additionally, the condominium's

by-laws provide: "[e]ach Unit Owner... shall be permitted to inspect the books of account of the Condominium... ." Article VII, Section 3.

Accordingly, that branch of plaintiffs' motion which seeks an order permitting her to inspect the condominium's books and records is also granted.

Settle Order.

DATED: Sept. 15, 1989

J.S.C.

At an IAS Part 6 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York on the 12 day of November, 1987.

PRESENT:

HON. ELLIOTT WILK
JUSTICE

KAREN de KLEINMAN,

Plaintiff,

- against -

THE BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Defendants.

ORDER AND JUDGMENT

Index No. 10516/86

Plaintiff having moved for summary judgment and defendants having opposed said motion;

NOW, upon reading and filing the

Notice of Motion dated July 18, 1986, the Affidavit of Karen de Kleinman, sworn to on July 17, 1986, together with the exhibits annexed thereto, in support of plaintiff's motion; the Affidavit of John L. Grant, sworn to on September 30, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion; and the Affidavit of Karen de Kleinman, sworn to on October 15, 1986, together with the exhibits annexed thereto in reply thereto and in further support of plaintiff's motion; and the matter having come to be heard before this Court; and Phillips, Nizer, Benjamin, Krim & Ballon having appeared for Plaintiff, and Kurzman Karelsen & Frank and Riker, Danzig, Scherer, Hyland & Perretti having appeared for defendants; and due deliberation having been had thereon; and this Court having rendered a memorandum decision dated

September 15, 1987,

NOW, on motion of Kurzman Karelsen & Frank, co-counsel for defendant it is

ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is granted to the extent that plaintiff is granted summary judgment on her second cause of action, and defendants are directed to furnish plaintiff with a current mailing list of the owners of Olympic Tower within 5 days after service of a copy of this Order and Judgment with Notice of Entry upon defendants' attorneys; and it is further

ORDERED, that plaintiff's first cause of action is hereby dismissed.

_____

J.S.C.

SUPREME COURT: NEW YORK COUNTY
INDIVIDUAL ASSIGNMENT PART 6

----------x

KAREN de KLEINMAN,

Plaintiff,

Index No.

7081/86

- against -

THE BOARD OF MANAGERS OF
OLYMPIC TOWER CONDOMINIUM,

Defendant.

----------x

ELLIOTT WILK, J.[2]:

Plaintiff is the owner of several apartment units at Olympic Tower, a condominium located on Fifth Avenue and 51st Street.

On September 13, 1984, defendant, the Board of Managers of Olympic Tower Condominium, passed a resolution providing for certain procedures to be followed in nominations for election to the Board. This resolution stated that

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[2]I acknowledge the assistance of Tina Minauskas in the drafting of this opinion.

unit owners with a conflict of interest with the condominium are ineligible for election to the Board.

The Board included in the class of those with a conflict of interest persons associated with real estate brokerage firms representing persons buying, selling or leasing apartments in the building. Pursuant to this 1984 resolution, plaintiff was found to be ineligible for election to the Board of Managers.

Plaintiff, contending that a formal amendment to the by-laws is required to alter qualifications for Board membership, seeks a declaration that the 1984 nominating procedure resolution is invalid. Defendant contends that it acted within its authority in promulgating the resolution and seeks a declaration that the resolution is valid.

After plaintiff commenced this

litigation, the Board permitted her to run in the 1986 and 1987 elections, although it contends that it was under no legal compulsion to do so. The Board contends that because it has permitted plaintiff to run for election, her complaint no longer presents a justiciable controversy. I disagree. The Board has not rescinded the 1984 nominating procedure resolution. Plaintiff's ability to run for election to the Board in the future should not depend on the magnanimity of the Board. Additionally, it appears that, in the absence of a judicial determination, the 1984 resolution will spark annual litigation. See Carr v. New York State Board of Elections, 40 NY2d 556, 559 (1976).

I am similarly unpersuaded by defendant's argument that because it has the power to make decisions regarding the

Condominium's management, no amendment to the by-laws is required to alter the qualifications for board membership.

The Condominium Act (Real Property Law [RPL] § 339-d through § 339-ii) requires the operation of condominiums to be "governed by by-laws". RPL § 339-u. The by-laws of a condominium must provide for "[t]he nomination and election of a board of managers... ." RPL § 339-v(1)(a).

Article II, Section 1 of Olympic Tower's by-laws provides that "[e]xcept for Managers elected by Sponsor, all other Managers shall be Unit Owners... ." The by-laws contain no further restriction on board membership.

Article XII provides that the by-laws can only be amended or modified by a vote of 2/3rds of all the unit owners at a meeting of unit owners called for that purpose.

However burdensome or unwieldy the amendment procedure may be, it cannot be ignored for even the most pragmatic of reasons.

The by-laws and the Condominium Act compel a declaration that any change, addition, or modification of the qualifications for election to the Board of Managers requires an amendment to the by-laws.

Accordingly, plaintiff's motion for summary judgment is granted to the extent that the 1984 nominating procedure resolution is declared null and void.

Defendant's cross-motion for summary judgment dismissing the complaint and for the relief requested in the counterclaim is denied.

Settle Order.

DATED: 9/15/87

J.S.C.

At an IAS Part 6 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York on the 12 day of November, 1987.

PRESENT:

HON. ELLIOTT WILK
JUSTICE

KAREN de KLEINMAN,

Plaintiff,

- against -

THE BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Defendant.

ORDER AND JUDGMENT

Index No. 7081/86

Plaintiff having moved for a preliminary injunction and thereafter for summary judgment, and defendant having opposed said motions and cross-moved for summary judgment dismissing the complaint

and for the relief requested in the counter-claim;

NOW, upon reading and filing the Order to Show Cause dated April 1, 1986, and the Affidavit of Karen de Kleinman, sworn to on March 31, 1986, together with the exhibits annexed thereto, in support of plaintiff's motion for a preliminary injunction; the Affidavit of T. Vincent Learson, sworn to on April 9, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion; the Affidavit of Karen de Kleinman, sworn to on April 9, 1986 in reply thereto and in further support to plaintiff's motion; the Surreply Affidavit of T. Vincent Learson, sworn to on April 25, 1986 together with the exhibits annexed thereto; the Notice of Motion dated April 28, 1986 and the Supplemental Affirmation of Martin Stein, Esq. dated April 28, 1986 in support of

plaintiff's motion for summary judgment; the Notice of Cross-Motion dated May 23, 1986 [sic] and the Affidavit of Donald L. Kreindler, sworn to on May 28, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion for summary judgment; the Supplemental Affirmation of Martin Stein, Esq., dated June 2, 1986, together with the exhibit annexed thereto and the Further Affirmation of Martin Stein, Esq. dated June 11, 1986, both in further support of plaintiff's motion for summary judgment and in opposition to defendant's Cross-motion for summary judgment; the Order to Show Cause dated March 9, 1987 and the Affirmation of Martin Stein, Esq. dated March 6, 1987, together with the exhibits annexed thereto, in support of plaintiff's motion for additional preliminary injunctive relief; and the Affidavit of John L. Grant, sworn to on

March 30, 1987, together with the exhibits annexed thereto, in opposition thereto; and the matter having come to be heard before this court, and Phillips, Nizer, Benjamin, Krim & Ballon and Certilman Haft Lebow Balin Buckley & Kremer having appeared for plaintiff, and Kurzman Karelsen & Frank and Riker, Danzig, Scherer, Hyland & Perretti having appeared for defendant; and due deliberation having been had thereon; and this Court having rendered a memorandum decision dated September 15, 1987;

NOW, on motion of Kurzman Karelsen & Frank, co-counsel for defendant, it is

ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is granted to the extent that subparagraph (1) (B) of the Nominating Procedures adopted by the defendant Board of Managers of the Olympic Tower Condominium is hereby declared to be null

and void; and it is further

ORDERED that defendant's cross-motion for summary judgment dismissing the complaint and for the relief requested in the counter-claim is denied.

Enter: _____
J.S.C.

APPENDIX B

Petitioner's "BRANDEIS BRIEF"

PAGE

I. PENDING LEGISLATION
NEW YORK STATE LEGISLATION

ASSEMBLY BILL #3518/ 18
SENATE BILL #4743

"A COOPERATIVE AND CONDOMINIUM
UNIT OWNER'S BILL OF RIGHTS"
(Complete Text) App.B.1-13

* * *

II. OUR TOWN - New York City Newspaper focusing on community issues. 18

1. 5/31/87 - Editorial, "Curbing Coop Corruption" B.14
2. 4/17/88 - "Bill to give greater power to co-op and condo owners." B.17

* * *

III. COMMUNITY ASSOCIATIONS INSTITUTE (CAI)"FACTBOOK"
Statistics and background information regarding all forms of common-interest home ownership which includes condominiums, homeowners associations and housing cooperatives.

a) Facts-at-a-Glance B.24

b) What is a Community Association? B.29

c) Different Types of Ownership B.29

d) Map showing geographic growth locations of U.S. community associations B.34-38

* * *

IV. CONDOMINIUMS AND COOPERATIVES B.39
(2nd Edition), by Clurman, Jackson and Hebard

(Mistaken beliefs concerning restrictions on the transfer of condominium units,and the "right of first refusal".)

STATE OF NEW YORK

4743

1989-1990 Regular Sessions

IN SENATE

April 12, 1989

Introduced by Sen. GOODMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing and Community Development

An ACT to amend the general business law and the real property law, in relation to enactment of a residential cooperative and condominium owner's bill of rights

3518

1989-1990 Regular Sessions

IN ASSEMBLY

February 15, 1989

Introduced by M. of A. GRANNIS -- Multi-Sponsored by -- M. of A. BARBARO, BECKER, BRENNAN, BRODSKY, CLARK, COLEMAN, CONNERS, CROWLEY, DEARIE, DIAZ, DiNAPOLI, EVE, FRISA, GOTTFRIED, GREENE, HILLMAN, HINCHEY, JACOBS, JENKINS, KAUFMAN, LAFAYETTE, LASHER, MURTAUGH, NADLER, NOLAN, PASSANNANTE, PRESCOTT, SANDERS, STRANIERE, TALLON, YEVOLI, YOUNG -- read once and referred to the Committee on Housing

An ACT to amend the general business law and the real property law, in relation to enactment of a residential cooperative and condominium owner's bill of rights

S. 4743/A. 3518

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 352-eeeee to read as follows:

§ 352-eeeee. Residential cooperative and condominium owner's bill of rights. The organizational and operating documents of every residential cooperative housing corporation and every residential condominium association established or operating pursuant to the laws of the state shall guarantee the following to each shareholder or unit owner:

1. That any application in connection with matters which require approval of the board of directors or board of managers be processed in a reasonably expeditious manner on a non-

discriminatory basis pursuant to uniform procedures and timetables adopted in writing and that any such approval shall not be unreasonably withheld. A board's refusal to allow a shareholder or unit owner to sublet an apartment pursuant to a uniform policy which is reasonably designed to prohibit or limit subletting by non-resident shareholders or unit owners shall not be deemed to be an unreasonable withholding of consent pursuant to this subdivision. The board's decision shall be in writing and where approval is denied the decision shall set forth the reasons for denial. The foregoing provisions of this subdivision shall not prohibit the enforcement of uniform reasonable policies related to the health, safety and welfare of the residents and the safe and prudent operation of the premises.

S. 4743/A. 3518

2. That elections for members of the board of directors or the board of managers be held by secret ballot, unless waived by a unanimous vote of the shareholders present in person or by proxy at the election meeting, or in the case of an uncontested election, and that a tally of the votes received by each candidate in an election for the board of managers or board of directors be posted within one day following the availability of such information in a prominent place accessible to all tenants in each building affected by the vote.

3. That the board of directors or board of managers act in a timely fashion to fill any vacancies which occur on such boards.

4. That any member of a board of directors or board of managers who is elected while a shareholder or unit owner

in the cooperative corporation or condominium association, who is offering his or her apartment or the shares allocated thereto for sale, and who, subsequent to such sale shall no longer be a shareholder or unit owner in such corporation or association, shall resign from such board.

5. That complete and accurate financial statements and any other statements ordinarily provided to shareholders or unit owners be provided in a timely fashion pursuant to established timetables at least once annually. For the purposes of this subdivision "financial statements" shall include the balance sheets and statements of income and changes in financial position for each of the three most current fiscal years. Attached to said financial statements shall be a statement

which discloses (i) any known interest, direct or indirect, beneficial or otherwise, which any director, association member, officer, employee, agent, shareholder or condominium owner or relative of any such person has in any supplier of services or material to said cooperative or condominium and (ii) any consideration, financial or otherwise, which said director, association member, officer, employee, agent, shareholder or condominium owner or relative of any such person has received or is receiving from such supplier.

6. That the following documents be made available for inspection or copying by shareholders or unit owners at reasonable time on no more than ten days written notice to the board of directors or board of managers:

(i) approved minutes of board of

directors or board of managers meetings, provided that such boards shall have fifteen days from the dates of the meetings at which minutes are approved to prepare such minutes;

(ii) repair and maintenance bills and service contracts. All such bills and contracts shall fully describe the repairs or services performed and apportion the total cost for specific repairs or services;

(iii) banking account and financial investment statements;

(iv) vendor lists and competitive bidding submissions;

(v) reports of accountants, consultants and experts retained or hired to perform services for or on behalf of the corporation or association including financial statements as defined in subdivision five of this section

provided, however, that such reports may be withheld where the report concerns or may concern litigation, where the report was prepared in connection with the litigation and where a majority of the members of the board have voted to withhold such information. Where the matter concerns alleged conflict of interest involving board members the report may be withheld only upon a vote of the majority of disinterested board members. If all board members are interested parties the report may not be withheld; and

(vi) reports by municipal and/or county inspectors concerning compliance with health, building and housing codes and regulations.

7. That in addition to any other notice required by the cooperative corporation's or condominium

association's organizational or operating documents, notice of all board and shareholders or unit owner meetings be posted in conspicuous common areas at least ten days prior to such meetings.

8. That the board of directors or board of managers shall not impose special assessments, or enter into contracts for extraordinary expenses beyond customary operating or maintenance costs, without approval by a vote of the shareholders or unit owners. A vote of the shareholders or unit owners may be waived by the board in the case of (i) an emergency evidenced by an approved resolution of the board, (ii) a required refinancing of an existing mortgage or (iii) where shareholders or unit owners have been notified of the proposed action in writing within a reasonable period of time prior to the proposed date of

implementation of the action and where such notice provides that the board may waive a vote unless at least a certain percent of the shareholders or unit owners demand in writing that the action be put to a vote. Such percentage may not exceed fifty percent.

9. That shareholders and unit owners be provided with written procedures for requesting a timely determination by the board of directors or board of managers of disputes concerning responsibility for repairs including resolution of disputes between or among shareholders or unit owners, disputes between shareholders and the cooperative corporation or between unit owners and the condominium association.

§ 2. Subdivision 1 of section 339-v of the real property law is amended by adding a new paragraph (k) to read as

follows:

(k) That a member of the board of managers who is elected to fill a vacancy, unless elected by a general vote of the unit owners, shall hold office until the next meeting of unit owners at which the election of a member or members of the board of managers is in the regular order of business, and until his or her successor has been elected and qualified.

§ 3. Within 6 months of the effective date of this act the attorney general shall promulgate a handbook summarizing the rights of shareholders and unit owners vis-a-vis cooperative corporations and condominium associations and the procedures and processes available to shareholders and unit owners to enforce such rights.

§ 4. This act shall take effect

immediately provided however that as to residential cooperative housing corporations and residential condominium associations existing and operating as such on the effective date of this act the boards of directors of such corporations and the boards of managers of such associations shall within 1 year of the effective date of this act take all steps necessary to amend the appropriate organizational and operating documents of such corporations or associations to implement the provisions of this act.

OUR TOWN

"The newspaper that cares...

about you and your community"

Vol. 18 No. 5 CIRCULATION EXCEEDS 131,000

May 31, 1987

Editorials

CURBING COOP CORRUPTION

The petty tyrants who abound on the boards of directors of cooperative buildings are frightened. Their arrogant exercise of power over tenant-shareholders is being threatened by the Coop and Condo Bill of Rights passed by the New York State Assembly under the sponsorship of East Side Assemblyman "Pete" Grannis. A companion bill, S-2610, is being sponsored by Senator Roy Goodman.

A legislative alert issued by the Council of New York Cooperatives, a special-interest lobbying group for coop boards, urges its members to lobby

against the bill. Since the bill would require coop board members to disclose personal interests that they or their relatives might have with contractors and vendors that deal with their coop, the bill is a threat to those who would illicitly profit from their positions on a board of directors.

We believe that this provision alone merits the passage of the bill. It would eliminate the unjust and illegal enrichment of board members or their relatives as a result of undisclosed insider interests that the members had with contractors and vendors dealing with the coop.

The cooperative board council is organizing an intensive letter-writing campaign against the Bill of Rights for coop and condo residents. It is therefore urgent that residents write to the members of the Senate Committee on

Housing and Community Development in support of S-2610. Passage of the proposed legislation will eliminate much of the corruption and "under the table" payoffs that occur in the letting of contracts for services and construction by coop boards.

The Chairman of the Senate Committee is Senator John B. Daly. New York City members of the Committee are Senators Abraham Bernstein, Andrew Jenkins, Martin J. Knorr, Martin Markowitz, Olga Mendez, Frank Padavan, Israel Ruiz, Jr. and Guy Velella. You should address your correspondence to them at: New York State Senate, Albany, New York 12247. We also urge that you write to Senator Goodman to urge him to keep battling for this anti-corruption measure.

OUR TOWN

"The newspaper that cares...
about you and your community"

Vol. 18 No. 51 April 17, 1988

BILL TO GIVE GREATER POWER TO CO-OP AND CONDO OWNERS

By Greg Botvinik

A bill currently before the New York State Legislature is intended to provide owners/shareholders of condos and co-ops with greater powers in their dealings with boards of directors. Termed officially by its sponsors as a "residential cooperative and condominium owner's bill of rights," the bill (#1935) is being sponsored by Assemblymember "Pete" Grannis (Chairman of the Housing Committee) and by State Senator Roy Goodman.

The proposed legislation passed in the Assembly last year, but it was rejected in the Senate. It will be

coming up for another vote in both houses within the next few weeks.

fairness

According to Grannis, "The bill's intent is to make fairness part of the business of running co-ops and condominiums. Fairness means putting the coop boards procedures and policies down in writing for all to see; keeping shareholders informed about what their board is doing and how the board's decisions will affect their homes; giving all shareholders access to the information they need to be active participants in the corporation or association; letting shareholders know about upcoming meetings and votes so they can be prepared as to their opinions and assistance."

One of the highlights of the bill is a mandate for boards to make decisions requiring their approval is a "reasonably

expeditious manner on a non-discriminatory basis." Furthermore, all decisions would have to be in writing and whenever board approval was denied, the board's statement would have to include the reasons for denial.

Boards would have to fill vacancies on the board in a timely manner. Any resident board members who sold their shares or units would have to resign from the board.

conflicts of interest

Complete and accurate financial statements would have to be issued in a "timely" manner at least annually. They would have to include conflict of interest statements disclosing any interest held and any compensation received by any shareholder, owner, or director from any company supplying goods or services to the co-op/condo.

Key documents would have to be made

available for inspection or copying within ten days of any written request. Such information would include minutes of board meetings, bank statements, financial investment statements, competitive bid statements, accounting and consulting reports, and any code inspection reports.

Boards would be limited in their ability to impose special assessments or to enter into contracts for extraordinary expenses without a referendum by the owners/shareholders.

Persons elected by the board to fill any vacancies would be allowed to hold office only until the next regularly scheduled meeting of owners at which board members would normally be elected.

current problems

Co-op and condo boards are presently governed by general business laws, business corporation laws, and the

individual by-laws of each corporation or association. Supporters of the bill say that it will help prevent the types of abuses that have been committed under the existing laws. For example, Fran Lee, a West Side consumer rights advocate, maintains that in her years of experience as a co-op shareholder and board member, she has often witnessed situations in which boards have acted in a self-serving manner and have withheld critical information from their fellow shareholders.

Grannis reports that his office receives hundreds of complaints each year from co-op shareholders about their boards. These complaints concern a range of issues from denials of information requests to withholding explanations of important board decisions, including the reasons why prospective purchasers have been rejected. By mandating explanations

for board denials of requests, the bill would eliminate at least the most blatant incidents of rejection of applicants on the basis of race, sex, age, marital status, occupation, etc.

opponents of bill

Critics of the bill have no qualms with its intent. However, attorney Stephen Raphael and Mary Ann Rothman, Executive Director of the Council of New York Cooperatives, report that they are concerned that some of the bill's terms are too vague. They predict that differences of its interpretation would undoubtedly lead to a drastic increase in the amount of costly and time-consuming litigation between owners/shareholders and boards.

When asked about this criticism Grannis stated, "I fail to see how such fairness will invite litigation. Litigation has occurred in the past,

because there has been nothing to govern what are often the arbitrary and capricious decisions of the board. The very intent of the bill is to put fairness into law so that past and present litigation can be avoided. Instead of unnecessary disputes between a board and the shareholders, there will be a law on the books that settles the matter."

Rothman believes that the bill is essentially superfluous because it merely reiterates many existing legal requirements. In several cases where prospective purchasers suspected that their applications were rejected because of racial or sexual discrimination, they had those decisions reversed after filing complaints and pursuing investigations by the City's Human Rights Commission.

COMMUNITY ASSOCIATIONS INSTITUTE

1423 Powhatan Street, Suite 7

Alexandria, Virginia 22314

(703) 548-8600

Community Associations

Facts-At-A-Glance 1988

. Number of Community Associations (CA): 130,000

. Types of CAs:

Condominiums: 54 percent

Homeowners Associations (HOA): 41 percent

Housing Cooperatives: 5 percent

. Number of CA Units: 12,350,000

. Average Number of Units Per CA: 95

. Average Number of Persons Per CA Unit: 2.4

. Number of Residents in the United States Who Live in CAs: 29,640,000 (or 12.1 percent of U.S. residents)

CA Growth

1962: 500 CAs

1975: 20,000 CAs

1980: 55,000 CAs

1988: 130,000 CAs

*2000: 225,000 CAs * Projected Growth

. Characteristics of CAs

Architectural Types:

(Distribution)

Townhouses: 39 percent

Mixed Architectural Types: 20 percent

2-4 Story Multifamily Houses:

17 percent

Single-Family Detached: 15 percent

High-Rise (5+ Stories): 9 percent

(Emphasis and underscoring added by petitioner.)

COMMUNITY ASSOCIATIONS FACTBOOK

Facts About Community Associations

- One out of every eight Americans (29.4 million people) lives in common-interest communities governed by community associations
- In 1962 there were 500 community associations in the United States; today there are 130,000. 54 percent are condominiums, 5 percent are housing cooperatives, and 41 percent are homeowners associations
- More than half of community associations are townhouse and garden (low-rise) developments
- Community associations spent over $12.5 billion last year and maintained another $5 billion in reserves - a buying power greater than the total annual budget for the State of Illinois

- In the 50 largest metropolitan areas, community association developments account for at least 50 percent of the market share of new home sales
- 27 percent of all multifamily housing starts last year were condominiums- up 4 percent from 1986
- In 1987, 16 percent of all first-time homebuyers bought condominiums
- 48 percent of all condominium buyers are first-time buyers
- Homes in community associations are available in all price ranges, however, the median cost of a condominium ($83,800) is 12 to 15 percent below the cost of a new single-family home
- Condominiums appreciated at a faster rate than single-family homes last year
- 95 percent of today's common-interest community homebuyers are satisfied

with their purchase

- The problems most often cited in community associations involve pets, children, parking, and noise. These same problems are cited in surveys of community association homeowners in Japan and Australia
- The U.S. Department of Labor identifies community association management as a growth profession through the year 2000

What Is a Community Association?

Community Association (CA) is a generic term used to describe all forms of common-interest homeownership. The purchaser of a home in a community association development enjoys unique services and amenities provided by the owners association.

There are three types of community associations. Each type combines individual homeownership with shared use or ownership of common property, and each operates according to similar principles of self-governance. However, the different types of CAs have distinct characteristics.

The Different Types of Community Association Ownership

Condominiums - The homeowner owns the interior of the individual residence while the exterior is owned "in common" with the other owners. The unit owner

actually owns a partial interest in the common property in addition to the residence. The association is responsible for maintaining the property and delivering common services, but does not own the common property.

Homeowners Associations (HOA) - The homeowner owns the lot, including the interior and exterior of the individual home, while the association owns and maintains the common property.

Housing Cooperatives - Private corporations in which members own shares in the corporation that owns the buildings and grounds. Shareholders lease their units from the corporation. The housing cooperative maintains all common property and pays a common mortgage.

The First Community Associations

Some people contend that condominiums evolved directly from

prototypes built during the 6th century B.C. in Rome. More recent research indicates that the condominium form of ownership had its roots in Medieval Germany and was a logical solution for meeting the homeownership desires of an emerging middle class of merchants.

The first HOA in the United States was Louisburg Square, a townhouse association built in 1828 in Boston Massachusetts. The first housing cooperative was established in New York City in 1918. The nation's first condominium, The Greystoke, was built in Salt Lake City, Utah, in 1962. Today, there are over 130,000 community associations of all types.

Community Associations Come in All Shapes and Sizes

Community association developments come in a variety of architectural types, and range in size from the smallest

communities of just two units, to larger ones having thousands of units. The median size is 95 units, but 26 percent of association developments have less than 50 units and 25 percent have more than 250 units.

Community associations are present in any development without regard to architectural type - single-family, townhouse, low-, mid-, or high-rise. However, because homeownership in a HOA almost always includes the land under the unit, HOAs are typically found in single-family detached or townhouse attached developments. Condominiums and cooperatives are found with any architectural type, but are the only form that can be used where units are stacked, as in low-, mid-, or high-rise developments.

A pioneer community association and one that is among the best known planned

unit developments in the country is Reston, Virginia. Were Reston a city, it would rank in the top 500 in population; already, Reston is larger than 18,000 of the United States' cities and towns. Similarly, the Columbia Association in Maryland recently celebrated its 20th birthday. With a population of 68,000 and near in size to Charleston, South Carolina, Columbia would rank 311th among U.S. cities.

Community Associations by Percentage Distribution of Architectural Types

Townhouse/Townhome	39%
Mixed Use Types	20%
2-4 Story Multifamily	17%
Single-Family Detached	15%
High-Rise (5+ Stories)	9%
Total	100%

SOURCE: Community Associations Institute (CAI) and the Advisory Commission on Intergovernmental Relations (ACIR), 1988.

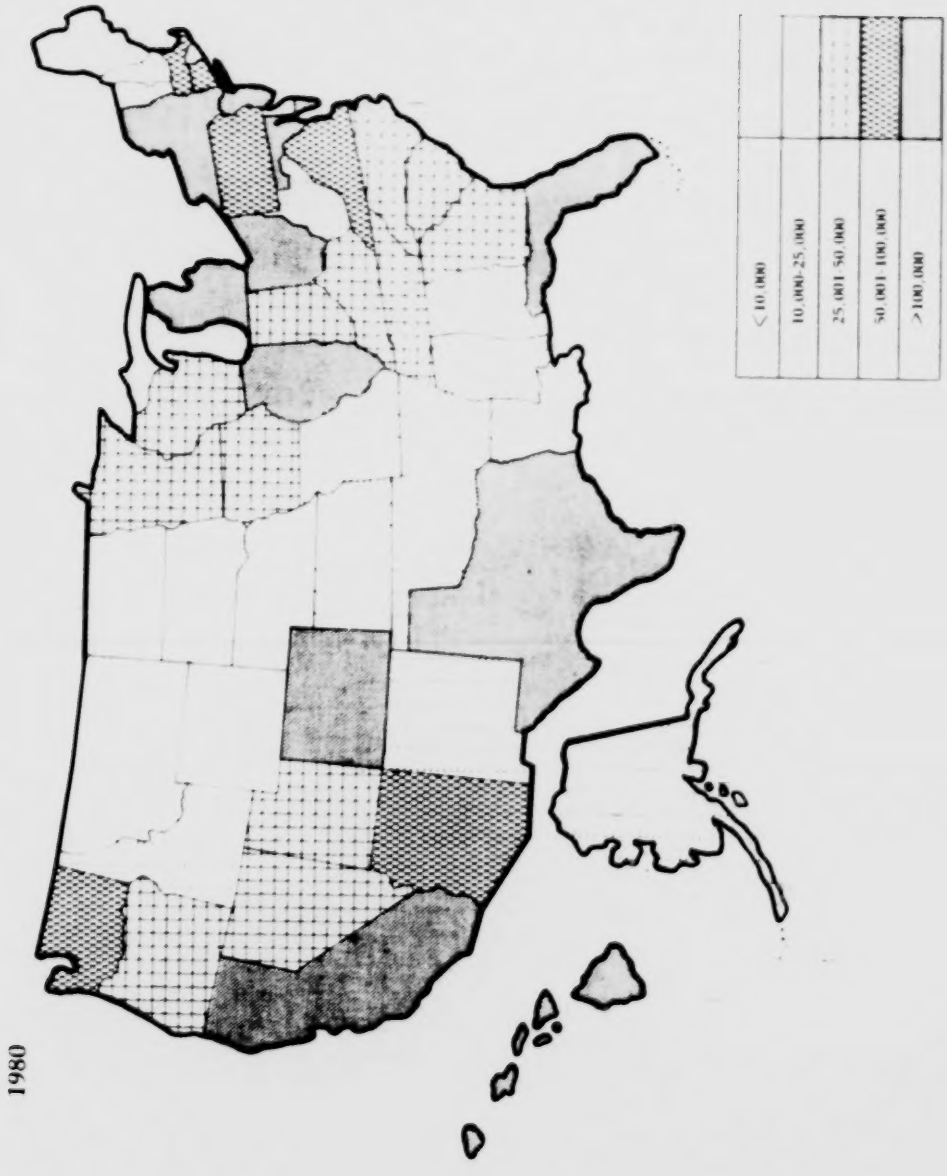
WHERE Are CAs Located?

1970



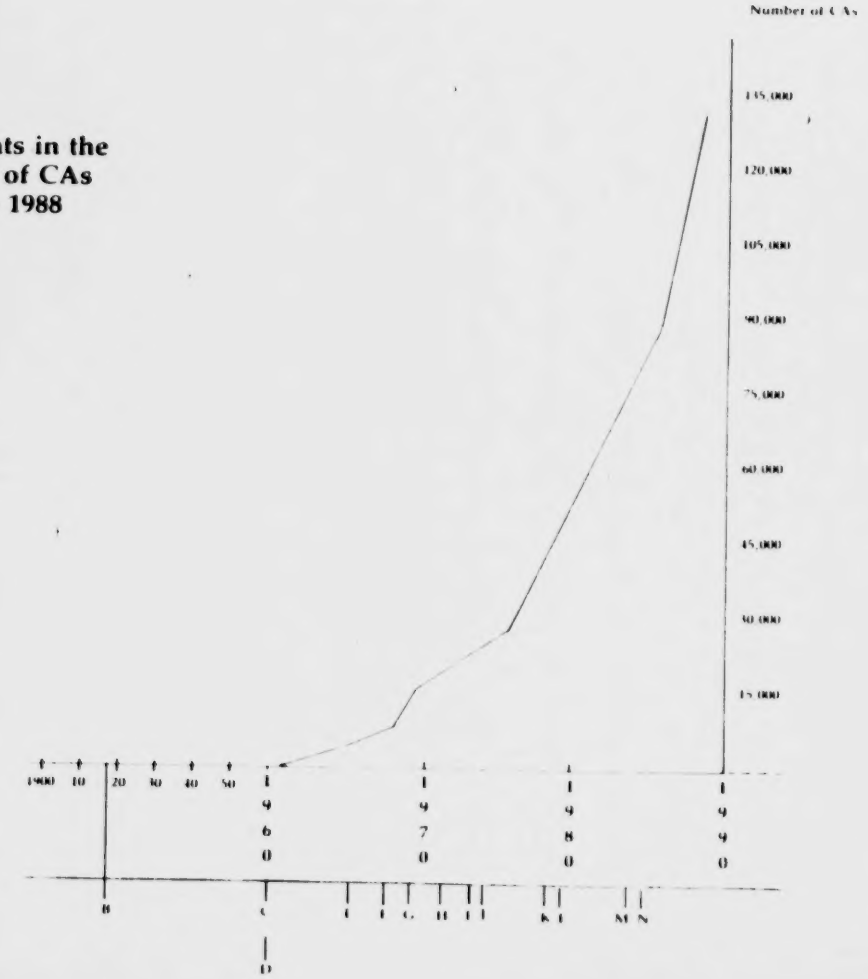
SOURCES: U.S. Bureau of the Census; Arthur D. Little, CAI

The geographic distribution of community associations in the United States has undergone marked changes since the CA's initial appearance on the housing front. Until recently the bulk of community associations were extremely localized, with 50 percent of all community association developments concentrated among three states-California, New York, and Florida-during the 1970s. By 1980, 80 percent of all CAs were distributed across 10 states. Today, the prevalence of community associations is apparent throughout urban and suburban America. It is expected that the 1990 Census will show an even greater abundance of CAs throughout the country.


1980
< 10 000
10 000- 25 000
25 001- 50 000
50 001- 100 000
> 100 000

Estimates for 1988 are that there are 11 and one-half million CA units in the United States and more than 130,000 community associations. Given current population trends and considering the economics of home-buying, CAI estimates that by the year 2000, there will be over 225,000 community association developments and in excess of 18.5 million units.

Key Events in the Growth of CAs 1829 - 1988



A	Louisburg Square, Boston, 1828. (First HOA.)
B	First coop, 1918.
C	The Greystoke, Salt Lake City, 1962. (First condominium.)
D	Federal Housing Administration (FHA) offers insurance for condo mortgages.
E	The pill hits the market, 1965.
F	50th state adopts Condo Act, 1967.
G	Equal Credit Opportunity Act (ECOA) passed.
H	CAI established, 1973.
I	Veterans Administration (VA) insures condo mortgages for Vets, 1974.
J	Fannie Mae (Federal National Mortgage Association) begins buying condo mortgages, 1975.
K	Condo conversion boom, 1978.
L	Uniform Condo Act, 1979.
M	Fannie Mae provides condo loans, 1984.
N	Tax Reform Act, 1986.

The following brief discussion of the "right of first refusal" is found on page 112 in a comprehensive volume entitled CONDOMINIUMS AND COOPERATIVES (2nd Edition) by Clurman, Jackson and Hebard.

"It is disturbing to find that in a large number of condominiums the residents hold mistaken beliefs concerning restrictions on the transfer of units. The usual error consists of believing that the approval of the board was required rather than that notice of the intended sale, subject to the right of first refusal or of buyer substitution must be given by the unit owner to the board before any sale could be made. ***"

"The trend of the case law is to construe provisions containing rights of first refusal very strictly, and community associations may be liable for heavy punitive damages if the right is

discriminatorily exercised. In fact, the task force of the secondary market agencies (VA, FHA, FNMA, and FHLMC) published a report in December of 1980, which said that the agencies will not involve themselves in any condominium project where the right of a unit owner to freely sell or rent his or her unit is subject to any right of first refusal or similar restriction."

(emphasis and underscore supplied)

APPENDIX C PAGE

CORPUS JURIS SECUNDUM App.C.1-8

VOLUME 16-A/CONSTITUTIONAL LAW

Section 506: Property Rights and Interests 4,5,C.1

Section 507: Nature and Extent 4,C.5

CORPUS JURIS SECUNDUM

Volume 16A/pgs. 606-612

"CONSTITUTIONAL LAW"

§ 506. Property Rights and Interests

The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, which is protected by the federal and state constitutions.

Research Note

Property and rights therein protected under due process of law are discussed infra § 982 et seq.

Library References

Constitutional Law 87.

The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, the protection of which is one of the most purposes of government. It is a common-law right, which existed before the adoption of the federal and state constitutions, and is

not now dependent on them for its existence. Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, i.e., rules or understandings that secure benefits and that support claims of entitlement to those benefits. However, to insure their continuance, property interests are guaranteed by the federal and by the various state constitutions.

The constitutional provisions for the protection of property shall be liberally construed in favor of the right of property. Protection of the right to property is not dependent on the value or amount of property held. The right may not be submitted to vote, and depends on the outcome of no election. The right to enjoy property without unlawful deprivation is a personal right,

regardless of the property in question.

The right to private property and its incidents are embraced within the guaranty of liberty, but the right to own and enjoy property is no more sacred than personal liberty or human rights. A person has the right to be free from unauthorized actions of government officials which substantially impair his property interests, and constitutional protections against governmental intrusion are not dependent on ownership or possession but on a person's claim to privacy of his property or home.

Under constitutional provisions, no person can be deprived of his property except by his own consent or the law of the land, or except for very urgent reasons. Furthermore, the constitutional guaranties of property exclude arbitrary restrictions on property rights, and all statutes and ordinances which violate the

constitutional guaranties are null and void; an in some jurisdictions, the guaranty extends to individual interference as well as to legislative encroachment. However, a statute does not deprive a person of property unless it prevents him from doing an act which he desires to do or diminishes the enjoyment or profit which he would otherwise derive from his property. Moreover, without violating the guaranty of property, the legislature may make special provisions for the security of life and limb and leave property to the protection of the common law***.

§ 507. Nature and Extent

The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto, and is not limited to the protection of tangible property, but extends to intangible property as well.

Research Note

The guaranty of property includes the liberty to contract, as discussed supra § 491, and, as considered supra § 494, comprehends, as well, the right to engage in any lawful trade, occupation, or business.

Library References

Constitutional Law 87.

The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto, and is not

limited to the protection of tangible property, but extends to intangible property as well. As protected by the various constitutions, property is more than a mere thing which a person owns; indeed, "property," in the constitutional sense, is not the physical thing itself but is rather the group of rights which the owner of the thing has with respect to it. The term "property" is broad enough to offer protection to an objective expectancy of the continuance of an interest which has initially been conferred by the state, but whether a constitutional protection attaches depends upon the relative weights of the private interest affected and the governmental function involved, and not upon assignment of meaning to the word "property."

The guaranty embraces the right to acquire, possess, use, enjoy, protect,

improve, as by the erection or construction of a building, lease, and dispose of, or not dispose of, property. However, it has been held that the right to alienate one's property is not a fundamental right. One may devote his property to any legitimate use, provided he does not violate any provisions of the federal and state constitutions or violate any constitutional laws or regulations.

On the other hand, the constitutional guaranties do not secure to any man the right to acquire property in anything that is not the subject of private property by law, or the right of disposing of property that has not been duly acquired under the law of the land, nor does the guaranty extend to property to which the complaining party has no title. Furthermore, the state is not required to grant all the traditional

incidences of property rights where some degree of interest has been granted.

Various interests have been held to be property, or not to be property, protected under the constitutional right of private property.